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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition NO. 2927 **/2003**

PETITIONER : Malkham, Aged about 55 years
S/o Fakira Jangade, Sarpanch
Gram Panchayat Thakurtola
Tah. Dongargarh, District
Rajnandgaon (C.G.)

VERSUS

RESPONDENTS 1. The State of Chhattisgarh
Through Sub-Divisional Officer
Dongargarh Distt. Rajnandgaon

P. R. No. 2216/03
Presented by Shri Pankaj Kothekar
dated 02.08.03

2 The Collector
Rajnandgaon (C.G.)

3. Shivendra Singh, S/o. Jivan Singh
Up-Sarpanch, Thakurtola,
Tah. Dongargarh District
Rajnandgaon (C.G.)

WRIT PETITION U/A 226/227 OF THE CONSTITUTION OF INDIA

(46)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 2327 सन् 2003

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

06.12.2003

Shri Parag Kotecha, counsel for the petitioner.

Shri Ranbir Singh, Govt. Advocate for the State.

Heard both the counsel.

By this writ petition under Article 226/227 of the Constitution of India the petitioner who was Sarpanch of Gram Panchayat Thakurtola, Tehsil Dongergarh Distt. Rajnandgaon (C.G.) has challenged the order dated 09.07.2003 (Annexure P-4) passed by the Collector, Rajnandgaon in Case No.52-A/89/2002-03 by which the learned Collector has dismissed the dispute of the petitioner.

The brief facts leading to filing of this writ petition are that the petitioner is an elected Sarpanch of the Gram Panchayat Thakutola, Tah. Dongergarh Distt. Rajnandgaon. The few members of the Gram Panchayat Thakurtola informed the Prescribed Authority and Sub Divisional Officer, Dongergarh on 13.02.2003 in a prescribed form for bringing 'no confidence motion' against the petitioner. On receiving the notice the Prescribed Authority appointed a Presiding Officer to conduct the proceedings of no confidence motion and meeting was fixed on 25.02.2003 at 12.00 noon in the Gram Panchayat Thakurtola and all the members were informed accordingly. On receiving a request from the Sarpanch of the Gram Panchayat i.e. the petitioner that he being ill will not be able to attend the meeting, the Prescribed Authority postponed the date and time of the meeting for 26.03.2003 at 12.00 noon in the Gram Panchayat Thakurtola and the intimation of the same was despatched and on 26.03.2003 in the meeting no confidence motion was taken up and in which

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

out of total 20 members had cast their votes in favour of the no confidence motion and accordingly it was held that the no confidence motion has been carried out. Accordingly, the Prescribed Authority removed the petitioner from the post of Sarpanch, Gram Panchayat Thakurtola, against which the petitioner moved a dispute under Section 21 (4) of the Panchayat Raj Adhiniyam, 1993 and the learned Appellate Authority i.e. the Additional Collector dismissed the dispute vide order dated 09.07.2003 (Annexure P-4).

A very limited point has been raised in this petition and the point raised by the learned counsel for the petitioner before the Court is that Sub-rule (3) of Rule 3 of Rules, 1994 envisage that notice of meeting specifying the date, time and place thereof shall be caused to be dispatched by him through the Secretary of Gram Panchayat and to every member of the Panchayat concerned seven days before the meeting and the High Court of M.P. in the case of **Smt. Bhulin Dewangan Vs. State of M.P. & Others reported in 2000(4) M.P.H.T. at Page 69** held that the provisions of Sub-rule 3 of Rule (3) of the 1994 Rules are mandatory in nature. In this case it is not disputed that initially the Prescribed Authority fixed the meeting on 25.02.2003 and notices were dispatched on 20/02/2003, however, the petitioner moved an application before the Prescribed Authority saying that he is ill, therefore, he will not be able to attend the meeting, therefore, the Prescribed Authority postponed the meeting for 26.03.2003 and for which the notices were dispatched on 21.03.2003, this has been admitted by the learned counsel for the respondents in the return.

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
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In these facts the clear position emerges is that the notices were not dispatched seven days before the meeting as per the second part of the Sub-rule (3) of the Rule (3) of the Rules 1994, therefore, the mandatory requirements of the sub-rule was not complied with which even learned counsel for the respondents could not dispute. The only point raised by the learned counsel for the respondents is that the petitioner has not pleaded and established that on account of non-compliance of Sub-rule 3 of Rule 3 of 1994 what serious prejudice has been caused to the petitioner and how the failure of justice has been caused.

I have perused the petition of the petitioner, it has nowhere mentioned in the petition that on account of non-compliance of the mandatory provisions any serious prejudice or failure of justice has been caused to the petitioner. In the same judgment, which has been referred herein above making reference of the many previous judgments, it has been held that the general rule is that a mandatory provision of law requires strict compliance and the directory one only substantial. But even where the provision is mandatory, every non-compliance of the same need not necessarily result in nullification of the whole action. In a given situation even for non-fulfillment of mandatory requirement, the authority empowered to take a decision may refuse to nullify the action on the ground that no substantial prejudice has been caused to the party affected or to any other party, which would have any other substantial interest in the proceeding. This Court under Article 227 of the Constitution has also a discretion not to interfere even though a mandatory requirement of law has not

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

been strictly complied with as thereby no serious prejudice or failure of justice has been caused. Therefore, in view of this Full Bench judgment of High Court of M.P. the petitioner has not pleaded and established that on account of non-compliance of the mandatory provisions of Sub-rule (3) of Rule 3 of Rules 1994 what serious prejudice or failure of justice has been caused to him. In the absence of the same no relief can be granted to the petitioner under Article 226/227 of Constitution of India.

In the result the petitioner has failed to prove and establish that on account of non-compliance of the mandatory provisions of Sub-rule (3) of Rule 3 of the Rules, 1994 what serious prejudice and failure of justice has been caused to the petitioner. Therefore, the petition is liable to be dismissed and the same is dismissed.

Consequently, M.W.P. No.2687/2003 also stands disposed of.

Sd/-
L.C. Bhadoo
Judge

Roshan L
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